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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,454	04/02/2001	Jonathan Paul Brennan	8047	9506

27752 7590 06/03/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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CINCINNATI, OH 45224

EXAMINER

SPERTY, ARDEN B

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/824,454	Applicant(s) BRENNAN, JONATHAN PAUL	
	Examiner Arden B. Sperty	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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FINAL OFFICE ACTION

1. Applicant's remarks, filed 3/17/05, have been entered and carefully considered. Applicant's remarks are not found persuasive, as detailed herein, and remain rejected as stated in the previous office action.

Claim Rejections - 35 USC § 102

2. Claims 1-2 and 8 remain rejected under 35 U.S.C. 102(b) as being anticipated by Cohen (5505719), as stated in the previous office action.

The Cohen reference teaches outer layers, and the second and third layers, in combination, are analogous to the inner layer claimed by Applicant. In other words, the second and third layers are essentially sublayers that in combination are equivalent to the claimed inner layer.

Claim Rejections - 35 USC § 103

3. Claims 3-5 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (5505719), as applied to claim 1 above, and as stated in the previous office action.

While the Cohen reference is not concerned with the properties of claims 3-5, the invention is used in the same capacity as the claimed invention (as an absorbent composite) and is made of the same materials. It would therefore be obvious to one of ordinary skill in the art to optimize the claimed properties. Absent a showing of criticality with respect to the claimed property values, no patentable distinction is seen between the claimed values and those common and useful in the art.

Response to Arguments

4. Applicant's arguments filed 3/17/05 have been fully considered but they are not persuasive. Applicant argues that the second and third layers are not analogous to Applicant's claimed fibrous inner layer. The argument is not persuasive because the "comprising" language of the claim does not exclude a multilayer inner layer. The claim language requires that the inner layer be fibrous, include 10% to 60% conjugate fiber, include 10% to 90% cellulosic fiber, and be bonded in discrete sites to the first and second outer layers. The reference teaches these requirements.

5. Applicant's argument against the 35 USC 103(a) rejection of claims 3-5 is unpersuasive. One of ordinary skill in the art knows how to optimize basis weights. Optimizing the basis weights is further motivated by the properties desired in a final product, and these properties vary on the ultimate intended use. The reference teaches various intended uses, i.e. column 1, lines 6-12, and it is understood by one of ordinary skill in the art that a diaper, for instance, may require different properties (absorbency, thickness, etc) than a feminine hygiene product. Even within the feminine hygiene art it is known to optimize properties based on whether the product is expected to absorb a large amount of fluid or a small amount of fluid. Applicant has not shown that the basis weights of the reference are any different from those recited by the claims, nor has Applicant shown unexpected results with the claimed basis weights.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

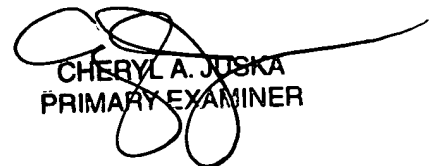
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arden B. Sperty
Examiner
Art Unit 1771

May 26, 2005



CHERYL A. JUSKA
PRIMARY EXAMINER